

Introduced by Senator Kuehl

February 17, 2005

An act to amend Sections 3200, 3201, 3403, 3411, 3413, and 3417 of, and to add Sections 3201.2, 3201.4, 3327, and 6400.5 to, the Penal Code, relating to female offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as amended, Kuehl. ~~Female~~ *Department of Corrections: female offenders.*

Existing law establishes the California Institution for Women to provide for the punishment, treatment, supervision, custody, and care of women convicted of felonies. Under existing law, institutions for women are administered by the Director of Corrections.

This bill would include rehabilitation among the purposes for which the California Institution for Women is established.

The bill would require the Department of Corrections to adopt and implement, by January 1, 2011, a correctional strategy to address gender-based issues for female offenders, as specified, and would require the Governor, if the correctional strategy has not been fully implemented by that date, to appoint a director possessing full authority over female inmates. It would establish an advisory board to provide recommendations regarding the administration of all institutions and programs for women.

The bill would require the Director of Corrections to appoint a coordinator of volunteer activities at each institution for women for specified purposes.

Existing law requires that every woman, upon being committed to a state correctional institution, be examined mentally and physically,

and be given care, treatment, and training adapted to her particular condition.

This bill would prohibit an inmate over 71 years of age from being assigned to an activity that requires physical exertion unless the inmate requests the activity. The bill would require each woman to be evaluated to determine if she has been the victim of domestic violence or sexual assault, and, if so, to receive appropriate counseling and treatment, as specified.

Existing law establishes community treatment programs for women with children.

This bill would make specified changes to the community treatment programs regarding the department's assessment of cost efficiency and the effect of an applicant's Medi-Cal or dental condition on her application for participation in the program.

Existing law requires that existing and future regulations adopted by the department regarding visitation satisfy specified criteria.

This bill would require the department to ensure that regular visiting occurs between all female inmates and the children with whom they are seeking reunification, unless the visits would impose harm upon the child.

~~Existing law provides for the custody and care of female offenders in state prisons.~~

~~The bill would state the intent of the Legislature to develop a correctional strategy to address the unique gender-based issues that exist for female offenders, and would make findings and declarations in that regard.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~(a)~~ The Legislature finds and declares all of the
- 2 following:
- 3 ~~(1)~~
- 4 *(a)* Of the 165,000 individuals incarcerated in California's
- 5 prisons, 10,000 are women. There are an additional 12,000
- 6 women on parole.
- 7 ~~(2)~~
- 8 *(b)* The vast majority of female inmates are not a threat to
- 9 public safety. Female inmates disproportionately commit

1 nonviolent property or drug-related crimes. More women
2 prisoners have been victims of violent crimes than were
3 convicted of violent crimes.

4 ~~(3)~~

5 (c) Women entering prison are more likely than their male
6 counterparts to be unemployed and uneducated, more likely to
7 suffer from mental illness and health problems, and are more
8 severely addicted to drugs. They are also significantly more
9 likely to be the primary caregivers of young children.

10 ~~(4)~~

11 (d) The current correctional system fails to take into account
12 the unique characteristics and needs of women prisoners. The
13 state has made only minimal efforts to provide the
14 gender-responsive strategies that experts agree are essential for
15 female prisoners and parolees to become self-sufficient and
16 law-abiding citizens.

17 ~~(5)~~

18 (e) Over one-half of California's women prisoners were the
19 caretakers of minor children before being arrested. Two-thirds of
20 them were the only caretaker. Improving outcomes for women on
21 parole could not only reduce costs and improve public safety, but
22 positively impact the lives of California's children.

23 ~~(6)~~

24 (f) Seventy-five percent of female offenders are housed in two
25 large, remote facilities, far from their homes and families. More
26 than half of the children of female prisoners never visit their
27 mothers during incarceration, in part because of how difficult it is
28 to arrange transportation to these remote facilities. Experts agree
29 that whether connections between prisoners and their families are
30 maintained can mean the difference between offender success
31 and recidivism.

32 ~~(7)~~

33 (g) More and more experts agree that to be effective with
34 female offenders, re-entry strategies need to address the
35 circumstances and needs of women while incarcerated and upon
36 release.

37 ~~(8)~~

38 (h) To be effective, policies and procedures addressing female
39 offenders need to respond to women's pathways into and out of

1 crime and to the contexts of their lives that support criminal
2 behavior.

3 ~~(b) It is the intent of the Legislature to develop a correctional~~
4 ~~strategy to address the unique gender-based issues that exist for~~
5 ~~female offenders.~~

6 *SEC. 2. Section 3200 of the Penal Code is amended to read:*

7 3200. There is and shall continue to be within the State an
8 institution for the *rehabilitation*, punishment, treatment,
9 supervision, custody and care of females convicted of felonies to
10 be known as “The California Institution for Women.”

11 *SEC. 3. Section 3201 of the Penal Code is amended to read:*

12 3201. (a) The purpose of—~~said~~ the institution, and of
13 community treatment programs for women and other programs
14 for women managed by or contracted through the Department of
15 Corrections, shall be to provide *rehabilitation*, custody, care,
16 protection, industrial, vocational, and other training, and
17 reformatory help, for women confined therein.

18 (b) *To meet this mission, the department shall adopt a*
19 *correctional strategy to address the unique gender-based issues*
20 *for female offenders. The strategy shall be based upon*
21 *evidence-based research, and shall address the unique*
22 *circumstances of female offenders, including the needs of the*
23 *following groups:*

24 (1) *Victims of domestic violence.*

25 (2) *Victims of sexual assault.*

26 (3) *Primary caregivers for children prior to arrest.*

27 (4) *Inmates with special health care needs.*

28 (c) *The department shall present the strategy to the*
29 *Legislature no later than January 1, 2007, and shall fully*
30 *implement the strategy no later than January 1, 2011.*

31 (d) *The department shall present to the Legislature a progress*
32 *report on July 1 and January 1 of each year until January 1,*
33 *2011, or until the strategy has been fully implemented, if earlier.*

34 *SEC. 4. Section 3201.2 is added to the Penal Code, to read:*

35 3201.2. *If the correctional strategy specified in subdivision*
36 *(b) of Section 3201 has not been fully implemented on or before*
37 *January 1, 2011, the Governor shall appoint a director who shall*
38 *possess full authority over female inmates, including the*
39 *institutions in which they are housed and the programs affecting*
40 *them.*

1 *SEC. 5. Section 3201.4 is added to the Penal Code, to read:*

2 *3201.4. (a) There is hereby established an advisory board to*
3 *provide recommendations regarding the administration of all*
4 *institutions and programs for women. The advisory board shall*
5 *be composed of the following:*

6 *(1) The Warden of each institution for women.*

7 *(2) Two representatives from entities contracting with the*
8 *Department of Corrections for community based treatment*
9 *programs, one to be appointed by the Governor and one to be*
10 *appointed by the President Pro Tem of the Senate.*

11 *(3) Two representatives from the academic community who*
12 *specialize in gender-based treatment of female inmates, one to be*
13 *appointed by the Governor and one to be appointed by the*
14 *Speaker of the Assembly.*

15 *(4) One correctional officer representing peace officers in*
16 *institutions for women, to be appointed by the President Pro Tem*
17 *of the Senate.*

18 *(5) One social worker representing social workers in*
19 *institutions for women, to be appointed by the Speaker of the*
20 *Assembly.*

21 *(6) Two community members, each of which shall be either a*
22 *former inmate of an institution for women or the child of a*
23 *former female inmate, one to be appointed by the Governor and*
24 *one to be appointed by the Speaker of the Assembly.*

25 *(b) The board shall meet at least six times per year until*
26 *January 1, 2011, and shall meet at least four times per year*
27 *thereafter.*

28 *(c) The board shall report to the Legislature each year*
29 *concerning its activities.*

30 *SEC. 6. Section 3327 is added to the Penal Code, to read:*

31 *3327. To reduce recidivism among female offenders, and to*
32 *expand the capacity of the literacy programs described in Section*
33 *2053.1, the Director of Corrections shall appoint a coordinator*
34 *of volunteer activities at each institution for women and establish*
35 *a description for this position. The coordinator shall actively*
36 *recruit volunteers from the prison population, the community, or*
37 *the prison administrative system. These volunteers shall possess*
38 *the skills to teach, at minimum, general education development*
39 *degree courses, English as a second language, and other*
40 *academic courses to assist in successful reentry. The coordinator*

1 may recruit volunteers with other skills that will assist in the
2 successful reentry of female inmates. The coordinator may also
3 research and write grant applications for these activities. The
4 Department of Corrections shall establish a description for this
5 position and commence these activities regardless of whether
6 additional funding is provided for these activities.

7 SEC. 7. Section 3403 of the Penal Code is amended to read:

8 3403. (a) Every woman upon being committed to ~~said~~ the
9 institution shall be examined mentally and physically, and shall
10 be given ~~the~~ care, treatment, and training adapted to her
11 particular condition. ~~Such~~ No inmate over 71 years of age shall
12 be assigned to an activity that requires physical exertion unless
13 the inmate requests the activity. The care, treatment, and training
14 provided shall be along the lines best suited to develop ~~her~~ each
15 woman's mentality, character, and industrial capacity; provided,
16 however, no inmate shall be confined longer than the term of her
17 commitment.

18 (b) Upon being transferred into the custody of the Department
19 of Corrections, each woman shall, in addition to other testing
20 provided to all inmates by the Department of Corrections, be
21 evaluated to determine if she has been the victim, at any time, of
22 domestic violence or sexual assault.

23 (c) The Department of Corrections shall ensure that any
24 woman who has been identified as having been a victim of
25 domestic violence or sexual assault shall receive appropriate
26 counseling and treatment beginning no later than 30 days after
27 transfer to an institution. Counseling shall continue until a
28 certified counselor familiar with each woman's particular course
29 of treatment recommends the treatment be discontinued.

30 SEC. 8. Section 3411 of the Penal Code is amended to read:

31 3411. (a) The Department of Corrections shall, on or before
32 January 1, 1980, establish and implement a community treatment
33 program under which women inmates sentenced to state prison
34 pursuant to Section 1168 or 1170 who have one or more children
35 under the age of six years, whether born prior to or after January
36 1, 1976, shall be eligible to participate within the provisions of
37 this section. The community treatment program shall provide for
38 the release of the mother and child or children to a public or
39 private facility in the community suitable to the needs of the
40 mother and child or children, and which will provide the best

possible care for the mother and child. In establishing and operating such program, the department shall have as a prime concern the establishment of a safe and wholesome environment for the participating children.

(b) The department shall implement the community treatment program specified in subdivision (a) in at least seven sites. In choosing these sites, the department shall primarily consider whether a site has previously housed such a program and whether a significant population of female parolees resides near the site.

SEC. 9. Section 3413 of the Penal Code is amended to read:

3413. In determining how to implement this chapter, the Department of Corrections shall be guided by the need to utilize the most cost-efficient methods possible. *In determining cost efficiency, the department shall establish the net financial gain or loss to the state of placing a child in the program established by this chapter rather than in foster care or kin care.* Therefore, the Director of Corrections may enter into contracts, with the approval of the Director of General Services, with appropriate public or private agencies, to provide housing, sustenance, services as provided in subdivisions (a) and (b) of Section 3412, and supervision for ~~such inmates as~~ *who* are eligible for placement in community treatment programs. Prisoners in the care of ~~such~~ *those* agencies shall be subject to all provisions of law applicable to them.

SEC. 10. Section 3417 of the Penal Code is amended to read:

3417. (a) Subject to reasonable rules and regulations adopted pursuant to Section 3414, the Department of Corrections shall admit to the program any applicant whose child was born prior to the receipt of the inmate by the department, whose child was born after the receipt of the inmate by the department, or who is pregnant, if all of the following requirements are met:

(1) The applicant has a probable release or parole date with a maximum time to be served of six years, calculated after deduction of any possible good time credit.

(2) The applicant was the primary caretaker of the infant prior to incarceration. "Primary caretaker" as used in this chapter means a parent who has consistently assumed responsibility for the housing, health, and safety of the child prior to incarceration. A parent who, in the best interests of the child, has arranged for

1 temporary care for the child in the home of a relative or other
2 responsible adult shall not for that reason be excluded from the
3 category, “primary caretaker.”

4 (3) The applicant had not been found to be an unfit parent in
5 any court proceeding. An inmate applicant whose child has been
6 declared a dependent of the juvenile court pursuant to Section
7 300 of the Welfare and Institutions Code shall be admitted to the
8 program only after the court has found that participation in the
9 program is in the child’s best interest and that it meets the needs
10 of the parent and child pursuant to paragraph (3) of subdivision
11 (e) of Section 361.5 of the Welfare and Institutions Code. The
12 fact that an inmate applicant’s child has been found to come
13 within Section 300 of the Welfare and Institutions Code shall not,
14 in and of itself, be grounds for denying the applicant the
15 opportunity to participate in the program.

16 (4) *A staff physician has not found that the applicant’s current*
17 *medical or dental condition is likely to cause an adverse effect on*
18 *other persons if the applicant is placed in the program.*

19 (A) *The fact that an applicant has a medical or dental*
20 *condition requiring an ongoing prescription shall not, by itself,*
21 *be grounds for denying an application for participation in the*
22 *program.*

23 (B) *The fact that an applicant has a dental condition requiring*
24 *routine dental care shall not, by itself, be grounds for denying an*
25 *application for participation in the program.*

26 (b) The Department of Corrections shall deny placement in the
27 community treatment program if it determines that an inmate
28 would pose an unreasonable risk to the public, or if any one of
29 the following factors exist, except in unusual circumstances or if
30 mitigating circumstances exist, including, but not limited to, the
31 remoteness in time of the commission of the offense:

32 (1) The inmate has been convicted of any of the following:

33 (A) A sex offense listed in Section 667.6.

34 (B) A sex offense requiring registration pursuant to Section
35 290.

36 (C) A violent offense listed in subdivision (c) of Section
37 667.5.

38 (D) Arson as defined in Sections 450 to 455, inclusive.

39 (E) The unlawful sale or possession for sale, manufacture, or
40 transportation of controlled substances as defined in Chapter 6

(commencing with Section 11350) of Division 10 of the Health and Safety Code, if large scale for profit as defined by the department.

(2) There is probability the inmate may abscond from the program as evidenced by any of the following:

(A) A conviction of escape, of aiding another person to escape, or of an attempt to escape from a jail or prison.

(B) The presence of an active detainer from a law enforcement agency, unless the detainer is based solely upon warrants issued for failure to appear on misdemeanor Vehicle Code violations.

(3) It is probable the inmate's conduct in a community facility will be adverse to herself or other participants in the program, as determined by the Director of Corrections or as evidenced by any of the following:

(A) The inmate's removal from a community program which resulted from violation of state laws, rules, or regulations governing Department of Corrections' inmates.

(B) A finding of the inmate's guilt of a serious rule violation, as defined by the Director of Corrections, which resulted in a credit loss on one occasion of 91 or more days or in a credit loss on more than one occasion of 31 days or more and the credit has not been restored.

(C) A current written opinion of a staff physician or psychiatrist that the inmate's medical or psychiatric condition is likely to cause an adverse effect upon the inmate or upon other persons if the inmate is placed in the program.

(c) Nothing in this section shall be interpreted to limit the discretion of the Director of Corrections to deny or approve placement when subdivision (b) does not apply.

(d) The Department of Corrections shall determine if the applicant meets the requirements of this section within 30 days of the parent's application to the program. The department shall establish an appeal procedure for the applicant to appeal an adverse decision by the department.

SEC. 11. Section 6400.5 is added to the Penal Code, to read:

6400.5. (a) At each institution for women, the Department of Corrections shall ensure regular visiting occurs between all female inmates and the children with whom they are seeking reunification, unless the visits would impose harm upon the child. In cases in which distance prohibits regular physical visits, the

1 department may request funds from the Legislature and grants
2 from federal and private sources to increase the ability of the
3 children to physically visit their mothers or former caretakers.
4 (b) For the purposes of this section, “regular” means
5 occurring, if in person, at a frequency of no less than once per
6 month and, if not in person, occurring by telephone or through
7 electronic or paper mail at least once per week.